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Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

JOHN JONES,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS, STATE OF MICHIGAN

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the trial court properly suppressed the fruits of a search warrant where the supporting affidavit did not support probable cause under the Fourth Amendment because the named informants' statements were not against penal interest but shifted blame to others and where the information supplied did not establish that contraband would be found in the place to be searched.

II. Where a search warrant affidavit contains misleading information and material information was omitted from it so that the petitioner alleged it was written intentionally to mislead the magistrate or with reckless disregard for the truth, but no evidentiary hearing was held, does due process demand remand to the trial court for a full and fair evidentiary hearing prior to appellate review.

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Appendix I — Search Warrant And Affidavit Dated March 2, 1996 ..... 25a

Petitioner John V. Jones ("Mr. Jones") respectfully prays that a writ of certiorari issue to review the June 5, 1998 decision of the Michigan Court of Appeals *People v. Williams and Jones*, (C.O.A. No. 201743, rel'd. 6/5/98).

OPINIONS BELOW

The June 5, 1998 decision of the Michigan Court of Appeals is an unpublished memorandum opinion, *People v. Williams and Jones*, (COA No. 201743, rel'd. 6/5/98) and is reprinted in the Appendix to this Petition ("App."). at App A. The trial court's opinion from the bench is reprinted in the Appendix at App. B.

STATEMENT OF JURISDICTION

Mr. Jones seeks review of the memorandum opinion of the Michigan Court of Appeals that was issued on June 5, 1998, *People v. Williams and Jones*, (C.O.A. No. 201743, rel'd. 6/5/98) (App. A). On August 31, 1998 the Court of Appeals denied rehearing. The Michigan Supreme Court denied Mr. Jones' application for leave to appeal on May 25, 1999. (App. D). Mr. Jones tendered a conditional plea of guilt in the trial court pursuant to M.C.R. 6.301(C)(2), and filed a delayed application for leave to appeal in the Michigan Court of Appeals that was denied on August 30, 2000. (App. E). Mr. Jones then sought leave to appeal in the Michigan Supreme Court, which denied his application in an order entered on February 26, 2001. (App. F). His motion for reconsideration of the Supreme Court's denial of leave to appeal denied in an order entered on May 29, 2001. (App. G).

This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures", and provides that "no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be searched." U.S. Const. amend. IV.

This case involves a question regarding the level of reliability of information supplied by known informants that should be required to support probable cause in a search warrant affidavit.

Another question concerns whether Mr. Jones was afforded procedural due process where he was denied an evidentiary hearing under *Franks v. Delaware*, 438 U.S. 154, 90 S. Ct. 2674, 57 L. Ed. 2d 667 (1978). Mr. Jones alleged that information possessed by law enforcement officials was withheld from the magistrate issuing the search warrant, and that, therefore, the affidavit was drafted with reckless disregard for the truth. Therefore, the probable cause determination was destroyed given that the affidavit contains false and misleading information, and the omissions were material. The Michigan Court of Appeals arbitrarily denied his request for an evidentiary hearing.

A. Factual Background

Petitioner John V. Jones tendered a conditional plea of guilt under M.C.R. 6.301(C)(2) in the trial court to possession of over 225 but less than 650 grams of cocaine, for which he

was sentenced to serve 7 and ½ to 30 years in prison. (App. C). Under the conditional plea agreement, Mr. Jones reserved the right to appeal the Court of Appeals' reversal of the trial court's grant of his motion to suppress the narcotics and other evidence as the fruits of an illegal search and seizure. However, the both the Michigan Court of Appeals and the Michigan Supreme Court denied Mr. Jones subsequent applications for leave to appeal.

The search warrant affidavit (App. I) which Mr. Jones contends did not establish probable cause to support a search under the Fourth Amendment, was obtained by Livonia (Michigan) Police Officer Cory Williams, the affiant. The warrant, signed by a magistrate in the 16th District Court, authorized the officers to search two addresses: 9213 Stout, Detroit, Michigan and 31446 Alcona, Westland, Michigan. The search warrant authorized seizure of cocaine and all narcotics paraphernalia, materials used for the sale and distribution of controlled substances, paperwork, records, photographs and tape recorded material that evidences narcotics trafficking.

The affidavit contained 5 pages, and 8 paragraphs of information. The first 3 pages, paragraphs 1 and 2 (A)-(L), contains boilerplate allegations about "normal" practices of persons involved in narcotics trafficking, according to the affiant's training and experience. This boilerplate, despite its length, makes no reference to either Mr. Jones or the address at 9213 Stout. (App I).

Paragraph 3 of the affidavit states that 12 ounces of cocaine were recovered following a search at an address in Inkster, Michigan on March 1, 1996. Two individuals who

were arrested for possession with intent to deliver cocaine, Michael Gondeck and Nicole Adrienne Gondeck, were arrested and interviewed, purportedly by the affiant.

Paragraph 4 of the affidavit summarized the interview with arrested drug trafficker Michael Gondeck. Gondeck allegedly said he had been buying cocaine from a person he knew as "Jay" for about a year. Several times in the past 3 months, he met "Jay" at a residence on Stout in Detroit to buy cocaine. (App. I, par. 4). Gondeck described the house, which was at 9213 Stout Street, and pointed it out to officers. Gondeck also allegedly said he met "Jay" at that house to pay him money for cocaine he received on consignment. According to the affidavit, Gondeck said he met "Jay" at the Stout Street house on February 29, 1999 and obtained ½ kilogram of cocaine from him. (App. I, par. 4).

Paragraph 6 described the interview with Nicole Gondeck. She claimed that the cocaine at the Gondeck home was provided by "Jay", and she had driven to Florida with two of "Jay's" friends, returning on February 28, 1996. "Jay" bought 5 or 6 kilograms of cocaine that was transported to Detroit. On February 29, 1996, Ms. Gondeck said she and her husband received a half-kilogram of cocaine from "Jay" at a house on Stout Street in Detroit. (App. I, par. 6).

Paragraph 7 alleged that one of the Gondecks, probably Michael, told police he sold one Larry Hill two ounces of cocaine. It also said that Livonia Police executed a search warrant at "Larry Hill's" residence on March 1, 1996 and recovered 2 ounces of cocaine. (App. I, par. 7). The affidavit does not contain Larry Hill's address, nor does it say how police determined that Gondeck's "Larry Hill" was the same person whose residence they raided.

The allegations in paragraphs 7 and 8 refer only to 31446 Alcona, in Westland, Michigan, and have no relevance to the search of 9213 Stout Street in Detroit.

The affidavit did not say that the Gondecks had no opportunity to reconcile their stories before being interviewed by police. Nor did it say whether the Gondecks were interviewed together or separately.

Missing from the affidavit is any specific claim that "Jay" lives at the Stout Street address. However, It is artfully worded to give the erroneous impression that the affiant was alleging that he does. Together with the frequent references to the use of residences by drug traffickers to conduct business (App. I, pars. 2 (A)(B)(C)(E)(H)(K) and (L)), the affidavit leads the reader to conclude that the affiant believes the Stout Street address is "Jay's" residence, where evidence of drug trafficking can be found.

Later discovery in the trial court revealed that the Gondecks gave significant information that was not disclosed to the magistrate who signed the warrant. Michael Gondeck's statement admits that he had sold cocaine for 2 and ½ years, and that he sells 16-ounce quantities and "8-balls" to his customers. His statement says that it is not "Jay" but "Jay's brother" who lives at 9213 Stout Street. He described "Jay's brother" as about the same age as "Jay" with a medium build, about 5'10" tall. Gondeck told police he had been to "Jay's brother's" house 3 or 4 times.

Nicole Gondeck's statement indicates that she is a severe drug addict. Her husband Michael had to hide cocaine and money from her so she would not use it to buy more cocaine. She had been using and dealing cocaine for 5 years. Nicole

provided that she and her husband Michael had begun supporting themselves entirely by selling cocaine about 2 years ago, and had been selling about 12 ounces per month. Nicole admitted that she handled all the bags of cocaine found in her home and had taken some of it for her personal use. She clearly referred to the Stout Street home as being the home of "Jay's brother". "Jay", she said, lives in Southfield (Michigan).

The motion to suppress filed for Mr. Jones in the trial court alleged that the affidavit failed to establish the credibility and reliability of the Gondecks, and that their information was not reliable enough to supply probable cause. It also alleged that the affidavit did not provide a sufficient basis to conclude that contraband would be found at the indicated address. Mr. Jones asked for an evidentiary hearing to establish that the magistrate was materially misled by failure to present the additional information indicating that the Gondecks were unreliable informants, based on information they gave to police.

In the trial court, the prosecution did not dispute that the affiant had possession of all the information in the Gondecks' statements when the affidavit was submitted to the magistrate.

B. Trial Court Opinion

The trial court ruled that the Gondecks' statements were not against their penal interest because they only told police that they possessed, bought and sold drugs. (App. B). The statements did not relate to Stout Street or to "Jay" either. The Court found further:

The raid and seizures occurred on March 2nd, three days later. The police conducted no surveillance. They conducted no pre-buy. They did nothing else to corroborate the Gondeck's information that drugs had been purchased form that home.

If a person is not a police officer or a victim, a number of case have basically indicated that the information supplied to the police, which is then supplied to the Magistrate to obtain a search warrant, must then be corroborated. There was no corroboration of the information regarding the Stout Street address in this case. The police did nothing other than accept the facts — not the facts, but the statements made by the Gondecks.

It might be more reasonable had the Gondecks been upstanding citizens who just wanted to tell the police about drug transactions so that these people would be arrested and the drugs would be seized and crime would be reduced in the City of Detroit, however Michael Gondeck was an admitted drug addict who had regular customers himself. Nicole Gondeck was a drug addict who had such a serious habit that her husband was in the habit of concealing drugs from her because she would eat up or use up the drugs and thereby eat up the drug profits.

These were also people who had reason to point fingers at other people. They didn't give a statement or give any information to the police until after they were arrested themselves.

I've already indicated what I think about whether or not the statements they gave to the police regarding the Stout Street address were against their penal interest. I think not.

There is no good faith exception in Michigan to the rule that there must be probable cause demonstrated or reflected in the search warrant or the affidavit securing the search warrant, so that even if the police acted in good faith that would be of no avail.

The credibility, as I've already indicated, of the Gondecks was not established, veracity was not established as I've already indicated, and there was no corroboration or attempt to corroborate anything with regard to that Stout Street address. This is exactly the kind of case where the police based on the information they had, had reason to suspect that Jay and/or Jay's brother and the Stout Street address may be involved in drug transactions and take some action to verify their suspicions or to confirm their suspicions before going to a magistrate and seeking a warrant.

I don't know if there were deliberate misrepresentations with respect to the information in the search warrant. One could read the language regarding Jay and the Stout Street address as implying that Jay lived at the Stout Street address, On the other hand, there is some reference made to Southfield, so I don't know that the Magistrate was confused regarding the addresses or who lived there. But it's clear to me that with respect to the

> veracity, with respect to credibility, with respect to corroboration, it just wasn't there. There was no probable cause for the issuance of the search warrant in this case. The Motion is granted. (App, B).

C. Michigan Court of Appeals Opinion

The prosecution appealed the trial court's suppression of the fruits of the warrant. The Michigan Court of Appeals reversed, holding that the evidence should not have been suppressed because the search warrant was valid. (App. A). The Court ruled that under all of the circumstances, there was a substantial basis for the magistrate's probable cause finding. (App A, 2a). The Court found the informants' credibility was established by statements they made against their penal interest, and that their credibility was corroborated because the information they provided about Larry Hill was proven accurate "when the police raided Hill's residence and discovered two ounces of cocaine, after the informants admitted selling that amount to Hill." (App. A, 3a). The Court also found the informants had personal knowledge because of information they supplied about their transactions with "Jay" at the Stout Street address. (App. A, 3a).

Finally the Court found that Mr. Jones failed to demonstrate that the probable cause determination was fatally undermined by false or misleading information contained in the affidavit or by material omissions from it. (App. A, 4a). The Court made this ruling without having the benefit of an evidentiary hearing record about the information at issue.

Mr. Jones now requests that this Court grant this petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. THE AFFIDAVIT DID NOT JUSTIFY A SEARCH OF THE PREMISES AND THE TRIAL COURT PROPERLY SUPPRESSED THE FRUITS OF THE SEARCH UNDER U.S. CONST. AMEND. IV WHERE THE INFORMANTS' STATEMENTS WERE NOT AGAINST THEIR PENAL INTEREST BUT SHIFTED BLAME ONTO UNCHARGED INDIVIDUALS AND THE AFFIDAVIT DID NOT ESTABLISH A BASIS FOR BELIEF THAT CONTRABAND WOULD BE FOUND IN THE PLACE TO BE SEARCHED

Both the Michigan and Federal constitutions protect the right of every citizen to be free from unreasonable searches and seizures. U.S. Const. amend. IV, Mich. Const, 1963, art. 1, § 11. The Sixth Circuit Court of Appeals wrote about the fundamental principles underlying the constitutional protection in *United States v. Radka*, 904 F.2d 357, 360-61 (6th Cir. 1990). The Fourth Amendment requires that warrants be supported by probable cause and issued by a neutral and detached magistrate. The Fourth Amendment limits search and seizure powers to prevent arbitrary interference with privacy by law enforcement officials. The probable cause standard further protects against unjustified government intrusion. *Radka*, *supra*, 904 F.2d at 360-61.

In Michigan, information provided by informants is tested by a strict statutory standard. Under M.C.L. 780.653(a); M.S.A.18.1259(3)(a) an affidavit based on information from a named source must contain affirmative allegations that permit the magistrate to conclude that the

informant had personal knowledge of the facts alleged. *See also People v. Sherbine*, 421 Mich. 502, 508-512, 364 NW.2d 658 (1984).

The standard of review for a judge's decision to issue a search warrant is whether there is a substantial basis for the judge's conclusion that probable cause existed and whether there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238-239, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

The Gondecks' credibility was not established in the warrant. No investigation of the Gondecks was done, and the affidavit contained no other information that would support a determination that they were credible or that they spoke from personal knowledge. Other than the Gondecks' statements, nothing in the affidavit indicated why the magistrate should conclude that contraband would be found in the Stout Street residence.

In *Illinois v. Gates, supra*, this Court announced a "totality of the circumstances" test for analyzing whether a warrant established probable cause. The Court specifically noted that an informant's veracity, reliability, and basis of knowledge are all highly relevant in determining the value of his report. *Illinois v. Gates, supra*, 462 U.S. at 230.

In evaluating an informant's veracity, courts usually look at the credibility of the informant, often reflected by their track record of providing verifiable information. Where the informant has no track record of providing verifiable information, police typically seek to corroborate the

information supplied by an independent investigation. Here, no such investigation was done, but the Gondecks had no track record of providing reliable information.

In determining the reliability of informant's information, police must investigate the information to determine whether it can be verified. *Alabama v. White*, 496 U.S. 325, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990). Informants provide different types of information, including information regarding "future actions of third parties ordinarily not easily predicted. *White, supra*, 496 U.S. at 332, quoting *Gates, supra*, 462 U.S. at 245. Verification of information in a tip concerns the informant's ability to predict future behavior, and it is critical because it demonstrates knowledge of inside information and special familiarity with the respondent's affairs. *White, supra*, at 332.

Importantly, only when significant aspects of the informant's predictions are verified will there be reason to believe not only that the informant was honest but also was well informed. *White, id.* While in *White* the informant's allegations were corroborated by substantial independent investigation, in this case, as in *Florida v. J.L.*, 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000), there was no significant effort to verify the Gondecks' information, and no basis to conclude that they were either honest or well informed. Their credibility could not have been shown to the magistrate.

In *United States v. Weaver*, 99 F.3d 1372, 1376-1379 (6th Cir. 1996), the Court analyzed an affidavit containing information provided by a confidential informant. The Court pointed out that officers could have discovered facts to include in the affidavit that would not jeopardize the

informant's identity, e.g., a description of the marijuana, its location within the residence, a description of Weaver and information describing the distribution operation. *Weaver*, *supra*, 1378-1379, n.4. However, the Court wrote that where the government cites as particularized facts things that could be identified by any person passing the Weaver house, that is, the suspect's name, address and description of the residence, and combines this with boilerplate language, and little more than conclusory statements of the affiant's belief that there is probable cause, the affidavit is insufficient. In *Weaver* the Court suppressed the fruits of the search. *Weaver*, *supra*, 1376-1379.

The most important reason for rejecting the search warrant, the Court found, was that the affiant possessed only the informant's tip linking Weaver to possible drug activities, "yet undertook no substantive independent investigative actions to corroborate the informant's claims, such as surveillance of the Weaver residence for undue traffic or a second controlled purchase made with officers viewing." *Id.* 1379.

Relying on *Weaver*, the Court in *United States v. Bryant*, 951 F. Supp. 674 (E.D. Mich. 1997), found the affidavit deficient where the informant's facts with regard to possession of drugs were bare, and the only detail provided by the informant was a description of firearms in the defendant's possession, an irrelevant detail. As in *Weaver*, the affidavit contained insufficient detail and could have provided, for example, a description of the marijuana, how it was maintained, the location of the marijuana or paraphernalia within the residence, or a description of the defendant. Finally, there was no evidence in the affidavit that police attempted to conduct any surveillance to corroborate

the defendant's possession of firearms; rather, the affiant only confirmed the informant's tip as to the defendant's address and criminal record. Citing *United States v. Baxter*, 889 F.2d 731, 733 (6th Cir. 1989), the Court said that the law is clear that "merely verifying public information such as addresses . . . and criminal records is not sufficient to corroborate an informant's statement." *Bryant, supra*, at 678-679. Although the informant in *Bryant* had a lengthy track record of providing information to authorities, the search warrant allegations were still inadequate. Here, the track record of the named informants did not exist.

The Michigan Court of Appeals failed to address Mr. Jones' claims, relying on cases that were factually distinguishable or inapplicable. For example, the Court found, relying on *People v. Powell*, 201 Mich. App. 516, 522-523, 506 N.W. 2d 84 (1993) that named informants are presumed reliable. (App. A) *Powell*, however, does not apply. The informant in *Powell* was the victim who had been raped by the defendant, and she provided information based on her personal experience of the assault. She had not reason to fabricate information against the defendant. *Powell* therefore only applies where a presumptively reliable citizen personally witnessed the crime. It does not apply where, as here, the information comes from informants involved in criminal activities and who provide information after having been charged with crimes.

The Court of Appeals ignored precedent such as *People v. White*, 392 Mich. 404, 221 NW.2d 357 (1974) and *People v. Gleason*, 122 Mich. App. 482, 333 NW.2d 85 (1983), both of which applied a rule that has been applied by other federal courts after the *Illinois v. Gates* test was announced. In *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996), the Court

held that probable cause was not established by an informant's admission against penal interest because there was no other information showing that the informant knew Ortega or that Ortega actually belonged to the gang, that the gang existed, and the like. The Court specifically noted that informant's statements against penal interest, without more, will not raise the informant's tip to the level of probable cause required by the Fourth Amendment. *Ortega*, at 1525.

Federal courts therefore follow the logic of cases such as *Gleason*, *supra*, and *White*, *supra*, that information provided by admitted criminal named informants is not entitled to the same presumption of reliability as the information provided by a presumptively reliable citizen or crime victim.

The trial court also relied on *White* and *Gleason* in suppressing the fruits of this search warrant. The Court of Appeals made no attempt to apply these principles to the facts of the case at bar.

Here, the only allegations that might corroborate the informants are the allegations that one of the Gondecks told Livonia Police that on February 29, 1996, he sold two ounces of cocaine to one Larry Hill, that police executed a search warrant at Larry Hill's residence on March 1, 1996, and that they found two ounces of cocaine. Nowhere does it state Larry Hill's address, or how police determined that the Larry Hill named by Gondeck was the same person associated with the residence searched on March 1, 1996.

The Court of Appeals relied on the Larry Hill information as supporting the informants' credibility, but failed to account for the fact that the Gondecks had been arrested for sales of

narcotics. As such, they easily can provide names of people they know who have drugs, and can falsely claim these people were recently involved in drug transactions with them. The fact that the informants provided names of individuals they know who might have drugs in their homes does not corroborate their account of having recently transacted in narcotics with these persons. The fact that the Larry Hill search turned up drugs does not enhance the informants' credibility regarding 9213 Stout Street, and it does not establish reason to believe that contraband will be found inside the Stout Street address. The information only suggests that the Gondecks pointed the finger at other individuals after they had been arrested.

The Court of Appeals' opinion (App. A) assumed without analysis that the Gondecks' statements were against their penal interest and therefore established their credibility, citing *People v. Poole*, 218 Mich. App. 702, 706-707, 555 N.W.2d 485 (1996). However, while *Poole* concluded that statements against penal interest showed an informant's credibility, no description of the statements was set forth in the opinion. Mere citation, without more, is no substitute for the analysis that should be applied here.

The Court's finding that the Gondecks' statements were credible as being against penal interest fails to account for the context in which the statements were made. This Court found, in *Lee v. Illinois*, 476 U.S. 530, 541, 106 S. Ct. 2056, 90 L. Ed. 2d 514 (1986) that the arrest statements of a codefendant have been viewed with special suspicion because a codefendant has a strong motivation to implicate another and exonerate himself. Therefore the codefendant's statements about what the defendant did are considered less credible than ordinary hearsay.

The danger of this type of hearsay is its selective reliability. A codefendant's statement as to what a defendant did is presumptively unreliable because the statement may be the product of the defendant's desire to shift blame, curry favor, or avenge himself. *Lee, supra*, at 476 U.S. at 545.

Some perpetrators who are "caught in the act" often try to help themselves by pointing a finger at another to decrease their exposure to criminal liability. *Williamson v. United States*, 512 U.S. 594, 114 S. Ct. 2431, 129 L. Ed. 2d 476, 485-486 (1994).

For these reasons, the fact that an informant incriminates himself, standing alone, does not establish reliability or credibility. Presumably informants provide information with the intent of minimizing or relieving themselves from criminal liability, and they have a motive to exaggerate or fabricate. information. Courts recognize that such statements may be intended to shield the declarant from criminal liability[1]. *People v. White, supra*, 419, n.8, *Gleason, supra*, *United States v. Martin*, 615 F.2d 318 (5th Cir. 1980).

In *White, supra*, the court found that if information is obtained from a person who is not a police officer, victim, or uninvolved eyewitness, the information must be corroborated before an intrusion into the expectations of privacy guaranteed by the Fourth Amendment. *White, supra* at 419, n.8. In *Gleason, supra*, the Court found it is

1. In a similar vein, the prosecution has an affirmative duty to set forth whatever consideration a witness or codefendant received for his testimony against the defendant, because it impacts the reliability and credibility of the witness, and the jury is entitled to understand and account for this. *See Naupe v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

not sufficient to state in a conclusory fashion that the statements were against penal interest. The statements must be identified and the circumstances under which they were made disclosed to the magistrate. *Gleason*, *supra*, 122 Mich. App. at 491-492, n.7. Such statements actually tend to shield the informant against criminal liability, and statements by suspects in custody have little or no probative value, regardless of whether they can be characterized technically as a statement against penal interest. *Id.*

Applying *Williamson*, the Gondecks' statements that they bought and sold drugs are against their penal interests, but their allegations that they purchased drugs at an address on Stout Street were not. If they said they had sold drugs out of their own home, this would be against their penal interest. But direction to the Stout Street residence was just as likely to direct the police officers' attention away from them and to the property of a third party. In this sense the statements about the Stout Street house, the identity of persons they bought drugs from or the physical locations of the alleged transactions were not against the Gondecks' penal interest. Yet, it is this latter information that was critical to the probable cause determination in this case.

The Michigan Court of Appeals neglected to address the application of *Lee*, *supra*, and *Williamson, supra* to this case, and it failed to view the statements individually to determine whether they were or were not against penal interest.

Finally, although the trial court did not reach the issue of whether the information in the affidavit provided a basis to believe that contraband sought would be found at the address, its decision to suppress is supported by the affidavit's failure to state any basis to believe the contraband would be

found at the address at the time of the search. *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S. Ct. 1013, 94 L. Ed. 2d 72 (1987) reiterated the principle that the scope of a search is defined by the places in which there is probable cause to believe that the object will be found.

Here, the affidavit provided no basis to believe contraband would be found in the premises. The affiant alleges that it is usual and customary for those in drug trafficking to store their wares in their homes. (App. I, Par. 2, A, B, C, E, H, I, K, L). This is speculative, and it cannot form the basis for a search that seeks to locate specific contraband in the home. Absent from the Gondecks' information is any claim that they had reason to believe that there were drugs, paraphernalia, cash or other contraband on the premises at the time the search was being sought. Nicole Gondeck did not say she thought the shipment she brought from Florida was stored at the Stout Street address, and there is no claim that the Gondecks saw any other narcotics other than the cocaine they received when they allegedly went to the Stout Street home.

Still, the affidavit was written to make it appear that "Jay" lived at the Stout Street home. This was a distortion of the information given by the Gondecks, but, even if believed, it still fails to show that any of the items sought would presently be found at the Stout Street address.

The law does not permit a search based on mere speculation or assumption that evidence of illegal activity will be found, but it does require particularized facts indicating probable cause to believe the items will be found in the place to be searched. This is still true where there are plenty of allegations that relate to criminal activity of a person

who allegedly lives at the premises. *See United States v. Huguez-Ibarra*, 954 F.2d 546 (9th Cir. 1992), *Commonwealth v. Kline*, 234 P.A. Super 12, 335 A.2d 361 1975), *State v. Doile*, 244 Kan. 493, 769 P.2d 666 (1989), *State v. Mische*, 448 N.W.2d 415 (N.D. 1989).

Ultimately, the Michigan Court of Appeals concluded that the information in the search warrant allowed a reasonably cautious person to find a substantial basis to conclude that drug trafficking was occurring at the Stout Street address. (App. A). The Court did not address the warrant's failure to allege that the informants had any reason to believe narcotics would be found there after the most recent contact with "Jay". The Court also failed to address the affidavit's misleading wording that would allow the magistrate to believe that Jay lived at Stout Street in Detroit, when he lived in a Southfield home. Even crediting all the information in the affidavit, it does not supply a basis to believe that contraband would be found on the premises at the time of the search, or that drugs remained inside the house, or that it was habitually used to store narcotics. Instead of probable cause, the search was based on speculation that contraband would be found.

Likewise, uncorroborated statements by recently arrested drug traffickers, one of whom was a severe drug addict, should not be the sole basis for a determination of probable cause where there is no corroborating information supplied by police.

Mr. Jones respectfully requests that this Court grant his Petition for Writ of Certiorari, and vacate the erroneous ruling by the Michigan Court of Appeals that reinstated the charge against Mr. Jones.

II. WHERE THE SEARCH WARRANT WAS ISSUED BASED UPON AN AFFIDAVIT THAT CONTAINED MISLEADING INFORMATION AND IT WAS WRITTEN EITHER INTENTIONALLY TO MISLEAD THE MAGISTRATE OR WITH RECKLESS DISREGARD FOR THE TRUTH, THIS CASE SHOULD BE REMANDED FOR AN EVIDENTIARY HEARING

Mr. Jones asked for an evidentiary hearing in the trial court to support his claim that information was intentionally withheld from the magistrate that provided a false, misleading view of the evidence, or that the information was provided, at a minimum, with a reckless disregard for the truth. The trial court found it unnecessary to reach the issue, although it was argued on the record. Notably, the prosecutor did not dispute that the affiant knew the content of the information taken from the Gondecks after their arrests but before the warrant was prepared. Trial counsel also said that there was no dispute that the exhibits attached were in fact copies of the Gondecks' statements.

Although the trial court did not rule on this claim, the Court of Appeals found, without the benefit of a trial court record as to the facts, that "[d]efendants have failed to demonstrate that the probable cause determination was fatally undermined by false or misleading information contained in the affidavit or by material omissions from the affidavit." (App. A, 4a). The Court of Appeals had no factual basis upon which to make this determination, and it should have remanded to the trial court with instructions to conduct an evidentiary hearing.

The Gondecks' statements were omitted from the affidavit and therefore withheld from the magistrate. The affidavit therefore gives the erroneous and misleading impression that "Jay" lived in the Stout Street dwelling. This impression was central to the determination of probable cause, because if "Jay" did not live on Stout Street, there could be no reason to believe that he would keep drugs, records, paraphernalia or other contraband at that address.

In fact, Nicole Gondeck said in her statement that "Jay" lived in Southfield. Both Gondecks told police that it was not "Jay", but it was his brother, who lived on Stout Street. Also significant is the omission from the affidavit of much of the information regarding the extent of the Gondecks' involvement in the use and sale of drugs. The magistrate was never informed that Gondeck had 15 to 20 regular customers, that he regularly sold 1/16th and 1/8th quantities, and that this had been going on for several years. Similarly, Nicole Gondeck admitted her serious drug habit to police, but the magistrate was not made aware of the fact that it was so bad her husband had to hide drugs and money to keep her from taking them for her habit.

The omission of this critical information that was material to probable cause rendered the affidavit fatally defective. The omitted information was important to the magistrate's determination about the informants' credibility, but the affidavit presented was so condensed that the magistrate was misled. The Court of Appeals should not have summarily dismissed this claim without first remanding for an evidentiary hearing.

Where there is reason to believe that false or misleading information was placed in a search warrant affidavit, an

evidentiary hearing is required to permit the court to make the appropriate findings of fact. U.S. Const., amends. IV, V, XIV; Mich. Const. 1963, art. 1, §§ 11, 17, *Franks v. Delaware*, 438 U.S. 154, 155-156, 90 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), *United States v. Radford*, 106 F. Supp. 2d 944, 952-953 (E.D. Mich. 2000), *People v. Mackey*, 121 Mich. App 748, 754-55, 329 N.W.2d 476 (1982). The evidentiary hearing is required where the defendant makes a preliminary showing that a false statement "knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit" where it was necessary to the finding of probable cause. *Radford*, *supra*, at 952-953.

Here, the affidavit omitted material information known to the affiant and other officers, and the information was highly relevant to the determination of probable cause. *Franks v. Delaware*, *supra*, 438 U.S. at 155-156 permits the trial court to look behind an affidavit where there is an allegation that information was provided to the magistrate that was known to be false or where the affidavit exhibits a reckless disregard for the truth. This rule has been extended to situations where material information was withheld from the magistrate. *People v. Stumpf*, 196 Mich. App. 218, 224, 492 N.W.2d 795 (1994), *People v. Kort*, 162 Mich. App. 680, 685-686, 413 N.W.2d 83 (1987).

The material allegations and the material falsifications, omissions and distortions were provided to the magistrate with reckless disregard for the truth. It was essential for the trial court to determine the source of the false, misleading and omitted information, the reason for its omission, and the legal effect the information and omitted information had upon the validity of the affidavit.

A search warrant is invalid if tainted information within it comprises more than a minor portion of the information in the affidavit. *United States v. Langley*, 466 F.2d 27, 35 (6th Cir. 1972).

Here, deletion of the misleading information coupled with inclusion of the material omissions left very little upon which the prosecution could assert that there was a reasonable probability that contraband would be found in the place to be searched.

The Court of Appeals should not have made findings one way or the other about this issue, given the referenced offers of proof in the trial court. The parties did not dispute that the officers had additional information before the affidavit was signed, and did not dispute that it was not included in the affidavit. That being the case, the trial court only failed to hold an evidentiary hearing because another issue was dispositive, not because the offer of proof was inadequate to require an evidentiary hearing. Mr. Jones did make the requisite preliminary showing, *see Radford*, *supra*. The trial court should have been given the opportunity to review the issue and make a determination that could be reviewed by an appellate court.

This Court should grant review to correct the Michigan Court of Appeals erroneous determination that there was no merit to Mr. Jones claim, and correct its erroneous failure to remand this case to the trial court for an evidentiary hearing pursuant to *Franks v. Delaware*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN F. ROYAL
LAW OFFICES OF JOHN F. ROYAL
Attorneys for Petitioner
615 Griswold Street, Suite 1724
Detroit, Michigan 48226
(313) 962-3738

APPENDIX

APPENDIX A — MEMORANDUM OF THE COURT OF APPEALS FOR THE STATE OF MICHIGAN DATED JUNE 5, 1998

STATE OF MICHIGAN
COURT OF APPEALS

June 5, 1998

No. 201743
Recorder's Court
LC No. 96-004431

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LARRY C. WILLIAMS and JOHN JONES,

Defendants-Appellees.

Before: Neff, P.J, and White and D. A. Teeple,* JJ.

MEMORANDUM.

The prosecutor appeals as of right from orders dismissing drug charges against defendants following the trial court's decision to suppress evidence seized pursuant to a search warrant that the court determined contained insufficient information to support a probable cause finding. We reverse

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* Circuit judge, sitting on the Court of Appeals by assignment.

and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

To the extent that the trial court found the affidavit insufficient to establish probable cause because the affidavit lacked statements from which it could assess the credibility of the informants, the court erred. The task of the issuing magistrate is to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v Gates*, 462 US 213, 238; 103 S Ct 2317; 76 L Ed 2d 527 (1983). The duty of a reviewing court is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Id.* at 238-239. Under this "totality of the circumstances" approach, an informant's veracity, reliability, and basis of knowledge are all highly relevant in determining the value of his or her report, but these elements are not "entirely separate and independent requirements to be rigidly exacted in every case." *Id.* at 230-231.

The informants in this case were named. Named informants, as a general rule, are presumed reliable. *People v Powell*, 201 Mich App 516, 522-523; 506 NW2d 894 (1993). An affidavit based on information supplied by a named source must contain affirmative allegations that permit the magistrate to conclude that the informant had personal knowledge of the facts alleged. MCL 780.653(a); MSA 18.1259(3)(a); *Powell, supra*, 522. Here, defendant challenges the credibility of the informants and asserts a lack of corroboration. We conclude, however, that under the totality of the circumstances, there was a substantial basis for the magistrate's finding of probable cause.

Appendix A

The informants' credibility was reasonably established by the statements they made against their penal interest. *People v Poole*, 218 Mich App 702, 706-707; 555 NW2d 485 (1996). Additionally, the informants' credibility was corroborated by the fact that the information they supplied concerning Larry Hill was proven accurate when the police raided Hill's residence and discovered two ounces of cocaine, after the informants admitted selling that amount to Hill. *People v Stumpf*, 196 Mich App 218, 223; 492 NW2d 795 (1992).

The informants' admissions concerning their recent involvement with "Jay" in cocaine trafficking establish that the informants had personal knowledge of the facts alleged. *Powell*, *supra*, 523. The informants admitted to being in possession of twelve ounces of cocaine on March 1, 1996, to being fronted a half kilo of cocaine on February 29, 1996 by an individual named "Jay" at the Stout Street address, to selling two ounces of this cocaine to Larry Hill, a fact subsequently corroborated by the police, to selling 4-1/2 ounces of this cocaine to an individual named "Wayne," to purchasing cocaine on several occasions in the preceding three months from Jay at the Stout Street address and to delivering money to Jay at the Stout Street address to pay for cocaine fronted to the informants by Jay. In light of these factual statements, a reasonably cautious person could find a substantial basis to conclude that drug trafficking was occurring at the Stout Street residence and that evidence of that activity, including cocaine, would be found in the residence. *People v Dowdy*, 211 Mich App 562, 567; 536 NW2d 794 (1995); *People v Lucas*, 188 Mich App 554, 567-568; 470 NW2d 460 (1991).

Appendix A

Defendants have failed to demonstrate that the probable cause determination was fatally undermined by false or misleading information contained in the affidavit or by material omissions from the affidavit. *People v Stumpf*, 196 Mich App 218, 224; 492 NW2d 795 (1992).

Reversed and remanded for the reinstatement of charges against defendants. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Donald A. Teeple

APPENDIX B — EXCERPTS FROM TRANSCRIPT OF MOTION TO SUPPRESS AND ORDER OF THE RECORDER'S COURT FOR THE CITY OF DETROIT, STATE OF MICHIGAN GRANTING MOTION DATED JANUARY 31, 1997

STATE OF MICHIGAN
IN THE RECORDER'S COURT
FOR THE CITY OF DETROIT

Case No. 96-04431

THE PEOPLE OF THE STATE OF MICHIGAN

– vs –

LARRY C. WILLIAMS, and JOHN V. JONES,

Defendants.

MOTION TO SUPPRESS

Proceedings had and testimony taken before the Honorable DAPHNE MEANS CURTIS, Judge of the Recorder's Court, at Room 802, Frank Murphy Hall of Justice, Detroit, Michigan, on Friday, January 31, 1997, commencing at or about the hour of 11:30 A.M.

* * *

[6] THE COURT: Well, I don't intend this to be lengthy. As I indicated, the pleadings were, fairly substantial, but because I've digested them and because I believe I understand the respective positions, I don't think this need be a lengthy proceeding today.

MR. KING: I agree, Judge. In fact, I have nothing to contribute that's not in the Brief.

THE COURT: All right.

Basically Michael and Adrienne Gondeck, G-o-n-d-e-c-k, supplied the information that was used in the Affidavit to obtain a search warrant in this particular case. And, they were, and I suppose, are husband and wife.

They were arrested by the police for possession with intent to deliver cocaine during the drug raid in Inkster, Michigan, and twelve ounces of cocaine was recovered from that particular locale. Subsequent to the arrest of the Gondecks, the police were told that the Defendant, Michael, the husband, had purchased drugs several times during the prior three months from a person name Jay whom he had met at a Stout Street address. He described the address, the physical [7] appearance of the address, and subsequently pointed out that house or that home to the police. He indicated that he last obtained a half kilo of cocaine from this Jay on February 29th, 1996, at the Stout Street address.

My review of the — strike that.

The police subsequently used the information obtained from the Gondecks to obtain a search warrant signed by a magistrate. They raided the address, 9213 Stout, they recovered cocaine, allegedly recovered cocaine, and the Defendants were arrested.

I reviewed the statements made to the police, the statements reduced to writing that were given pre-warrant and pre-raid.

And, it turns out that the Gondecks were talking about Jay's brother and not Jay, and that Jay is the person who lives on Stout Street and lived on Stout Street at the relevant time in question, and that a person named Jay lived somewhere in Southfield.

There was other information given to the police, including the fact that Mr. Gondeck had been involved for some time in the drug trade himself, that he had, if I recall correctly, twelve to fifteen regular customers, and that his wife was an addict and was so far gone in terms of being addicted to drugs that he had to hide the narcotics from his wife so that she would [8] not eat up the drugs and therefore any profit that might be realized from the sale of drugs.

The police, upon obtaining information from the Gondecks, did not conduct a surveillance of the Stout Street address. They did not attempt to make a so-called pre-buy from the Stout Street address. They basically relied on the information given to them from the Gondecks and obtained the search warrant, searched the premises, and resulted in the seizure of the evidence, the narcotics, and the arrest of the Defendants.

Does it make a difference — if there's anything you think I need to add beyond what I said factually, tell me?

MR. KING: I would think that a search warrant, Your Honor, indicated that Mrs. Gondeck went down to Florida and came back with the drugs that were in the search warrant, that they received information from Mr. Gondeck that Mrs. Gondeck — and then there was corroboration between the

two of them as to the location of the house, they did go by the house, the house was described, they did go by the house and identified the house. It would appear from the search warrant that you could conclude that since he had purchased two or three months before from that address . . . .

* * *

[18] . . . corroborative, and it certainly is against penal interest the source of your drugs and the location you received them from.

THE COURT: If a person can or might be charged as the result of information they give to the police, that clearly is against one's penal interest. If a person tells the police I bought or sold drugs from X, Y, and Z on Stout Street on a given date, unless the police have the drugs and have other information with which to charge the Defendant, that statement alone does not expose the Defendant to any criminal liability. How can the person be charged by simply saying I bought drugs from that locale? You can't.

MR. KING: Well, I think you can.

THE COURT: How?

MR. KING: If Mr. Gondeck says I bought eighteen ounces of drugs off Jay and I sold two ounces to Larry, and we take Larry in and Larry says yeah, I bought two ounces off the Defendant — oh, Larry, would you like to testify in our behalf?

Appendix B

THE COURT: But it does not relate to the Stout Street and Jay. That doesn't expose them to anything. It's not a statement against their penal interest in that regard.

MR. KING: I think when Mrs. Gondeck [19] says she goes down to Florida and picks up five or six kilos of cocaine, I think that's certainly clearly against her penal interest.

THE COURT: Did they have the kilos that she got from Florida? That's what they would need in order to charge her. In other words, you saying that she did something wrong does not expose you necessarily to criminal liability.

MR. KING: But, for example, if we put that testimony charging her with possession with intent to deliver the eighteen ounces, and we put that statement in after she's been down to Florida to pick up five or six kilograms of cocaine, it certainly would hurt her in front of a judge or jury as the possession with intent to deliver.

THE COURT: All right. I don't have any additional questions. Is there anything else either of you or any of you would like to say?

MR. ROYAL: Nothing further.

MR. KING: No. Thank you.

THE COURT: The police had the name of a person, Jay. They had the name or they had someone else described as Jay's brother. They had a description of the Stout Street address. They had the Stout Street address pointed out to

them before seeking the search [20] warrant. And, they had statements that drugs were purchased over a period of three months from Jay at the Stout Street address, and that the last drug transaction was on February 29th at the Stout Street address.

The raid and seizures occurred on March 2nd, three days later. The police conducted no surveillance. They conducted no pre-buy. They did nothing else to corroborate the Gondecks' information that drugs had been purchased from that home.

If a person is not a police officer or a victim, a number of cases have basically indicated that the information supplied to the police which is then supplied to the Magistrate to obtain a search warrant must be corroborated. There was no corroboration of the information regarding the Stout Street address in this case. The police did nothing other than accept the facts — not the facts, but the statements made by the Gondecks.

It might be more reasonable had the Gondecks been upstanding citizens who just wanted to tell the police about drug transactions so that these people would be arrested and the drugs would be seized and crime would be reduced in the City of Detroit, however Michael Gondeck was an admitted drug dealer who had regular customers himself. Nicole Gondeck was a [21] drug addict who had such a serious habit that her husband was in the habit of concealing drugs from her because she would eat up or use up the drugs and thereby eat up the drug profits.

Appendix B

These were also people who had reason to point fingers at other people. They didn't give a statement or give any information to the police until after they were arrested themselves. I've already indicated what I think about whether or not the statements they gave to the police regarding the Stout Street address were against their penal interest. I think not.

There is no good faith exception in Michigan to the rule that there must be probable cause demonstrated or reflected in the search warrant or the affidavit securing the search warrant, so that even if the police acted in good faith that would be of no avail.

The credibility, as I've already indicated, of the Gondecks was not established, veracity was not established as I've already indicated, and there was no corroboration or attempt to corroborate anything with regard to that Stout Street address. This is exactly the kind of case where the police based on the information they had, had reason to suspect that Jay [22] and/or Jay's brother and the Stout Street address may be involved in drug transactions and take some action to verify their suspicions or to confirm their suspicions before going to a magistrate and seeking a warrant.

I don't know if there were deliberate misrepresentations with respect to the information in the search warrant. One could read the language regarding Jay and the Stout Street address as implying that Jay lived at the Stout Street address. On the other hand, there is some reference made to Southfield, so I don't know that the Magistrate was confused regarding the addresses or who lived where. But it's clear to me that

with respect to the veracity, with respect to credibility, with respect to corroboration, it just wasn't there. There was no probable cause for the issuance of the search warrant in this case. The Motion is granted.

MR. KING: Thank you, Your Honor.

Your Honor, if you'll excuse me, I have to get back down to Judge Worthy's courtroom. I'll enter an Order for the Court to sign.

THE COURT: All right. Thank you.

(At about 12:05 P.M. — Motion concluded.)

* * * *

Appendix B

STATE OF MICHIGAN
RECORDER'S COURT

CASE NO. 96-4431-02

THE PEOPLE OF THE STATE OF MICHIGAN

v

JOHN V. JONES

Defendant

ORDER GRANTING MOTION

At a session of said Court held in The Frank Murphy Hall of Justice at Detroit in Wayne County on JAN 31 1997

PRESENT: HON. DAPHNE MEANS CURTIS
Judge

A Motion to Suppress Physical Evidence purposely seized from 9213 Stout on 3/2/96 having been filed; and the People having filed an answer in opposition; and the court having reviewed the brief and records in this cause and being fully advised in the premises.

IT IS ORDERED THAT the Motion for the above be and is hereby granted.

s/ Daphne Means Curtis
Judge

APPENDIX C — ORDER OF THE THIRD JUDICIAL CIRCUIT COURT OF THE STATE OF MICHIGAN OF CONVICTION AND SENTENCE DATED JANUARY 12, 2000

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT

CASE NO/SUFFIX -

96004431-02

THE PEOPLE OF THE STATE OF MICHIGAN

v

JONES, JOHN, V

DEFENDANT

ORDER OF CONVICTION AND SENTENCE

1. At a session of the court on 11/29/1999 before the Hon. THOMAS, DEBORAH A, a Judge of the court, the defendant was convicted by: PLEA, of the offense(s) Poss. 0/225 L/649. Gr. Cocaine (333.74032A2) [PACC code(s)]

2. The defendant was in court for sentence on 1/12/2000 [Date] and was sentenced by the court to:

* * *

Appendix C

Michigan Department of Corrections, confined for a term of not less than nor more than 7½ – 30 yrs.

The maximum statutory penalty for the crime(s) of which said defendant stands convicted is 30 years.

* * *

RECOMMENDATION SA. 7½ – 30 yrs. Pros. agree to Bond pending Appeal — Appeal Bond $50,000.00.

* * *

The defendant was represented by ATTORNEY Cornelius Pitts BAR NO. P-18930 and is to be given credit for 4 DCR. days served in JAIL.

SAID CREDIT TO BE APPLIED TO MINIMUM AND MAXIMUM SENTENCE.

s/ Deborah L. Thomas
Judge

APPENDIX D — ORDER OF THE MICHIGAN SUPREME COURT DATED AND ENTERED MAY 25, 1999

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

SC: 113131
COA: 201743
Rec Ct: 96-004431

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY C. WILLIAMS and JOHN V. JONES,

Defendants-Appellants.

ORDER

Entered: May 25, 1999

On order of the Court, the application for leave to appeal from the June 5, 1998, decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court prior to the further proceedings ordered by the Court of Appeals and any subsequent review by the Court of Appeals.

Appendix D

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 25, 1999

s/ Corbin R. Davis
Clerk

APPENDIX E — ORDER OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN DATED AUGUST 30, 2000

COURT OF APPEALS
STATE OF MICHIGAN

Docket No. 228299
LC No. 96-004431-02

People of MI

v

John V. Jones

ORDER

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

s/ Michael R. Smolenski
Presiding Judge

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

August 30, 2000 — Date

s/ Carl L. Gromek
Chief Clerk

APPENDIX F — ORDER OF THE MICHIGAN SUPREME COURT DATED AND ENTERED FEBRUARY 26, 2001

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

SC: 117724
COA: 228299
Wayne CC: 96-004431-02

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN V. JONES,

Defendant-Appellant.

ORDER

Entered: February 26, 2001

On order of the Court, the application for leave to appeal from the August 30, 2000 decision of the Court of Appeals is considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

Appendix F

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 26, 2001

s/ Josephine B. MacKinnon
Deputy Clerk

APPENDIX G — ORDER OF THE MICHIGAN SUPREME COURT DENYING MOTION FOR RECONSIDERATION DATED AND ENTERED MAY 29, 2001

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

117724(15)

SC: 117724
COA: 228299
Wayne CC: 96-004431-02

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN V. JONES,

Defendant-Appellant.

ORDER

Entered: May 29, 2001

On order of the Court, the motion for reconsideration of this Court's order of February 26, 2001, is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

Appendix G

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 29, 2001

s/ Corbin R. Davis
Clerk

APPENDIX H — RELEVANT CONSTITUTIONAL PROVISIONS

CONSTITUTION OF THE UNITED STATES

AMENDMENT [IV.]

Searches and seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT [V.]

Capital crimes; double jeopardy; self-incrimination; due process; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Appendix H

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

APPENDIX I — SEARCH WARRANT AND AFFIDAVIT DATED MARCH 2, 1996

SEARCH WARRANT AND AFFIDAVIT

State of Michigan

SS

County of Wayne

To the Sheriff or any Peace Officer of Said County: P.O. Cory Williams

Affiant, having subscribed and sworn to affidavit for a Search Warrant, and having under oath examined affiant, am satisfied that probable cause exists;

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I command that you search the following place: The premises and curtilage commonly known as 9213 Stout, City of Detroit, County of Wayne, State of Michigan. This residence is further described as a white, single family, bungalow style residence with black railings and armor gaurd. The residence is located 3 houses north of Cathedral on the west side of Stout. The numbers 9213 are affixed to the front of the residence near the front door. The residence has a one car unattatched garage.

Also to be searched: The premises and curtilage commonly known as 31446 Alcona, City of Westland, County of Wayne, State of Michigan. This residence is further described as being a white, single family, ranch style residence with the numbers 31446 affixed to the front of the residence.

and to seize, tabulate and make return according to law the following property and things: Cocaine and all narcotics

paraphernalia. All materials used or intended to be used for the use, sale, packaging, transportation, and distribution of controlled substances. All monies and items obtained through the sale of controlled substances. All paperwork, ledgers, and records which may show evidence of trafficking in controlled substances. All photographic or tape recorded material which may show evidence of trafficking in controlled substances.

The following facts are sworn to by affiant in support of the issuance of this warrant:

1. The affiant is an Officer with the Livonia Police Department currently assigned to the Intelligence Bureau. The affiant has been a Police Officer for over 8 years, has over 2 years experience in narcotics investigations. The affiant has received specialized training in various aspects of drug law enforcement and drug related asset investigations, including the identification, locating, seizure and forfeiture of proceeds derived from violations of State and Federal narcotics laws. The affiant has personally been involved in numerous drug investigations both as a uniformed and undercover police officer. The affiant has attended schools and seminars dealing with the use, sale, manufacture, identification and distribution of controlled substances.

2. On the basis of affiant's training and experience, as well as the training and experience of other law enforcement officers, he is aware that:

A. Drug traffickers maintain books, records, receipts, notes, ledgers and other papers relating to the procurement,

distribution, storage, transportation of controlled substances to include records showing the phone numbers of customers, the beeper numbers of customers, the amount of controlled substances "fronted" to various customers along with running totals of debts of customers. They frequently maintain receipts such as credit card billings, parking stubs, hotel reservations/records, airline tickets, gas receipts and various notes. Items used to package controlled substances are also frequently maintained by drug traffickers. It is also common for these traffickers to maintain electronic devices that are used to facilitate their criminal activities, to include but not limited to, mobile telephones, paging devices, answering machines, police scanners and money counters. These aforementioned items are commonly maintained in locations to which drug traffickers have frequent and ready access, i.e., homes, garages, safety deposit box(es), businesses and automobiles.

B. It is common for drug traffickers to conceal narcotics, packaging material, paraphernalia, narcotics records, narcotics proceeds and other related items described above within their residences, garages, safety deposit box(es), businesses and automobiles and also in a like manner with their criminal associates in order to conceal such items from law enforcement authorities.

C. Persons engaged in drug trafficking commonly conceal large amounts of currency, financial instruments, precious metals and other items of value. It is common for drug traffickers to purchase items costing over ten thousand dollars. The reporting requirements, commonly called CTR's for transactions over ten thousand dollars cause tremendous problems for narcotics traffickers when they attempt to

negotiate their illegal profits at a financial institution. In doing so, often times traffickers will violate federal structuring/Currency Transaction Reporting laws (Title 21 United States Code Section 5324) by obtaining several cashier's checks/money orders in small increments for several institutions. Often times, the traffickers utilize "smurfs" to purchase these checks and/or money orders that generate receipts from these checks. The proceeds of drug transactions, and evidence of financial transactions relating to obtaining, transferring, secreting or spending large sums of money obtained through engaging in narcotics activities are maintained by drug traffickers in their residences, businesses, automobiles and other locations maintained for the purpose of concealing and facilitating their criminal activities.

D. Large-scale narcotics traffickers often purchase and/or title their assets in fictitious names, aliases, names of relatives, criminal associates(s) or business entitie(s) to avoid detection of these assets by government agencies. Even though these assets are in the names of persons other than the drug trafficker, the trafficker usually owns and continues to use these assets, maintaining dominion and control over the assets.

E. The sale of marijuana and other controlled substances generate large amounts of money. Drug traffickers must maintain, on hand, amounts of United States currency in order to maintain and finance their on-going drug business. Traffickers often secrete their money in locations to which they have ready access, i.e., safe deposit boxes, businesses, garages, storage facilities, automobiles and residences.

Appendix I

F. That drug traffickers take or cause to be taken photographs and/or video tapes of themselves, their associates, their drug proceeds or assets derived from the sale of controlled substances. That these traffickers usually maintain these photographs and/or the video tapes in their possession.

G. Courts have recognized that unexplained wealth is probative evidence of crimes of greed, in particular, trafficking in controlled substances. The courts have further recognized that small and medium denominations of questionable currency, along with the manner in which the currency is handled, carried, concealed, may establish probable cause that there is a substantial connection between the questionable currency and narcotics transactions.

H. It is common in the purchasing, selling and distribution of controlled substances for drug traffickers to "front" drugs (providing narcotics on consignment) to several clients, causing large debts to be incurred. Often times these drugs/debts are paid for in installments over a period of time and involve large amounts of currency to exchange hands. Because of the large amounts of drugs and debts involved, and to prevent discrepancies, it is necessary for records such as, but not limited to, papers, notes, ledgers, journals, and logs to be maintained by these drug traffickers. Frequently, these records are kept and concealed where the traffickers have ready access to them, i.e., homes, safe deposit box(es), offices, businesses, and automobiles.

I. It is common for drug traffickers to also be involved in violating income tax laws as well as money laundering statutes. On the basis of the affiant's training and experience,

it is known that activities of this type require detailed records to be maintained and controlled by the "true owner" of the drug related asset(s). Additionally, affiant knows through training and experience that these records are frequently maintained and kept in a location allowing for ready access and control by the trafficker.

J. Drug traffickers commonly maintain address books and/or telephone numbers in books, papers, or electronic devices that reflect the identity, addresses, pager number(s) and/or telephone numbers for their criminal associates in the drug trafficking organization, even if said items are in code.

K. Drug traffickers commonly maintain firearms in their residences or in their possession. These firearms are used to protect and secure the drug trafficker, his property, possessions and his/her product.

L. It is the affiants training and experience that persons who traffic in controlled substances often utilize garages, storage sheds, and/or vehicles located on their curtilage and premises for the purpose of storing and/or facilitating the trafficking of controlled substances.

3. On 3-1-96, affiant and officers from the Livonia Police Department Intelligence Bureau, along with officers of the Michigan State Police Narcotics Unit, executed a search warrant at 28436 Fernwood Inkster, Michigan. During the execution of the search warrant officers arrested Michael Anthony Gondeck and Nicole Adrienne Gondeck for Possession With Intent to Deliver Cocaine. During the execution of the search warrant approximately 12 ounces of Cocaine was recovered. Officer Francis Donnelly performed

a field test on the suspected Cocaine evidence, which resulted in a positive response for Cocaine.

4. Affiant interviewed Michael Gondeck at the Livonia Police Department incident to his arrest. Affiant read Michael Gondeck his Miranda rights from the standard Livonia Police Department rights form, which Michael Gondeck signed, indicating to affiant that he understood all of his rights. Michael Gondeck then waived his rights and began discussing his involvement in the trafficking of Cocaine. Gondeck told affiant that he has been purchasing Cocaine from a subject known to Gondeck as "Jay" for approximately the last year. Gondeck stated that he has met "Jay" at a residence on Stout St., in Detroit, several times during the past three months to purchase Cocaine. Gondeck further described this residence to affiant, as being a "little white house on the west side of Stout St., between Joy Rd. and West Chicago in Detroit." Gondeck told affiant that besides buying Cocaine from "Jay" at the house on Stout, he has also met "Jay" at this residence to pay him money for cocaine he received on consignment. Gondeck stated to affiant, that in the evening of 2-29-96 he met "Jay" at the residence on Stout St. and picked-up a half of a kilo of Cocaine that "Jay" gave Gondeck on a "front" (consignment). Gondeck told affiant that he owes "Jay" $12,400.00 for that 18 ounces of Cocaine.

5. In the early morning hours of 3-2-96, affiant and Sgt. McDermott, also a member of the Livonia Police Department Intelligence Bureau, drove Michael Gondeck past the residence at Stout, which Gondeck identified to officers as the residence located at 9213 Stout St., City of Detroit, County of Wayne, Sate of Michigan. Affiant and

Sgt. McDermott observed this residence to be a little white house on Stout St. between Joy Rd. and West Chicago in Detroit.

6. Sgt. McDermott interviewed Nicole Gondeck after she was advised of her rights. She agreed to waive her rights and speak with the officer about her role in cocaine trafficking. She told Sgt. McDermott that the 12 ounces of cocaine, that was seized from her and her husband's (Michael Gondeck) residence was supplied to them by a subject named "Jay." She said she had just driven to Miami Florida with "Jay" and returned on 02/28/96. She said she drove back from Florida with two of "Jay's" friends who were transporting cocaine from Florida to Detroit for "Jay." She believed "Jay" had purchased 5 to 6 kilograms of cocaine which had been secreted in the vehicle. Once in Detroit, she and her husband met "Jay" to take delivery of some of the cocaine. She admitted she and her husband took delivery of a half kilo of cocaine, on 02/29/96, during the evening. They met "Jay" and took delivery of this cocaine at a house on the West side of Stout, between Joy and W. Chicago Roads, in the City of Detroit. Her description of the residence on Stout, where she picked up Cocaine and dropped off money several times in the past, to pay for cocaine, accurately matched the residence pointed out to officers by Michael Gondeck.

7. Gondeck also told affiant that on 2-29-96 he sold a subject named Larry Hill two ounces of cocaine from the aforementioned 18 ounces. The Livonia Police Intelligence Bureau recovered approximately two ounces of cocaine from Larry Hill's residence, on 3/1/96, during an execution of a search warrant. Gondeck also said he delivered 4 1/2 ounces

of cocaine to a subject named "Wayne", for $4,000.00, during the evening of 02/29/96. Gondeck told affiant that he delivered the Cocaine to "Wayne's" residence in Westland, Mi. He further said "Wayne" and his girlfriend "Sherry" were present during the delivery inside the residence. Gondeck stated that "Wayne" is one of his customers and that he has delivered Cocaine to "Wayne's" residence several times in the past. He said "Wayne's" telephone number is 313-729-2820, that he drives a burgundy Chrysler vehicle, and has a room mate named "Hirm." The affiant cross checked that telephone number in Bressers cross index book and found it to be listed to Hiram Duff at 31446 Alcona, Westland, MI.

8. In the early morning hours of 3-2-96 affiant and Sgt. McDermott drove Michael Gondeck past "Wayne's" residence in Westland. Gondeck identified "Wayne's" residence as being located at 31446 Alcona, City of Westland, County of Wayne, State of Michigan. The officers observed a burgundy Chrysler parked in front of the residence with a temporary registration sticker posted in the rear window.

s/ P.O. Cory Williams
AFFIANT

Subscribed and sworn to before me this 2nd Day of March, 1996

Approved:

s/ Thomas Beck #P33304
Assistant Prosecuting
Attorney

s/ [illegible]
Judge/Magistrate
Wayne County, MI